

JUDGE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	No. CR17-5116 BHS
)	
Plaintiff,)	SECOND MOTION AND
)	MEMORANDUM OF LAW IN
v.)	SUPPORT OF MOTION TO COMPEL
)	DISCOVERY
CHARLES ANDREW STOCKER,)	
)	Noted: October 20, 2017
Defendant.)	

Charles Stocker respectfully moves the Court for an Order compelling the Government to produce discovery related to the “fraudulent list of supposed confidential informants” (CI list) that the Government filed with the Court on September 12, 2017. *See* Additional Briefing Addressing Early Release of Confidential Information (dkt. 41 and 41-1). This motion is based Fed. R. Crim. P. 16(d) and *Brady v. Maryland*, 373 U.S. 83 (1963). A Certificate of Compliance under Local Cr.R. 16(i) has been filed in conjunction with this motion. Trial is scheduled for January 16, 2017.

I. BACKGROUND

Charles “Andy” Stocker is now charged in a single count Superseding Indictment with Aiding and Abetting a Conspiracy to Distribute Controlled Substances (dkt. 49).¹ Mr. Stocker filed a first motion to compel in this case on August 4, 2017

¹ The Government has abandoned four of the five original charges in this case, which included two counts of Misprision of a Felony (Counts 3 and 4 of the original indictment); a charge of Aiding and Abetting the Distribution of Controlled Substances by a “target” different from the ones named in the Superseding Indictment (Count 2 of the original indictment); and a second charge of Aiding and Abetting the Distribution of Controlled Substances, which was contained in the duplicitous first count of the original indictment. *See* dkt. 11

(dkt. 25). That motion sought, *inter alia*, discovery related to the numerous informants that are the main witnesses in this case. On September 12, 2017 – the day before the Court’s hearing on the first motion to compel – the Government filed the Additional Briefing referenced above (dkts. 41 and 41-1). In that briefing, the Government alleged that Mr. Stocker was responsible for distributing “a fraudulent list of supposed confidential informants that the United States Attorney’s Office for the Western District of Washington purportedly created was circulating on the internet.” Dkt. 41 at 2. The Government specifically alleged that “the evidence gathered to date points directly to defendant Stocker as having released the document.” *Id.* at 3.

In truth, Mr. Stocker had nothing to do with the CI List. On September 14, 2017, defense counsel sent a letter to the Government seeking discovery related to the Government’s new allegations, requesting all records related to the allegations contained in the September 12, 2017 Additional Briefing. *See* Exh. A. In making this request, the defense noted that before leveling these accusations against Mr. Stocker, the Government had admitted that it relied on an informant who is reportedly “a gossip” with an apparent “tendency to embellish facts or make things up.” *Id.* (quoting the Government’s Additional Briefing, dkt. 41, at 4 n. 1). The defense’s discovery request also included the following summary of the discovery’s materiality:

Please note that this request is material to the defense even if you expressly disclaim any intent to introduce evidence at trial related to the posting of the informant list. The person who posted this information is likely the individual who is the source of leaks that you attribute to Mr. Stocker. As a result, any discovery that would help us to determine the source of the list is material to potential defenses at trial.

Exh. A (September 14 Letter of AFPD Colin Fieman to AUSA Justin Arnold).

On September 25, after additional correspondence between the parties, the Government provided a “native format” copy of the CI List on disc. That copy contains minimal metadata and no new information. The Government also notified the defense that any further discovery related to the CI List is “not rule 16 material;” that it would

1 “evaluate” whether or not to produce the discovery “at the conclusion of the
 2 investigation” into its new allegation against Mr. Stocker; and, “if necessary,” ask the
 3 Court to the review the discovery *in camera*. See Exh. B (Government’s September 25
 4 letter). This motion follows.

5 II. ARGUMENT

6 **The Discovery Sought by the Defense is Material to Potential Defenses 7 at Trial; the Court Should Order the Government to Disclose it.**

8 The Government contends that Mr. Stocker engaged in obstruction of justice by
 9 creating and circulating a list of confidential informants purportedly operating in the
 10 Aberdeen area. Mr. Stocker had nothing to do with the list and has no knowledge about
 11 who is responsible for it. However, since the remaining charge in this case revolves
 12 around allegations that Mr. Stocker disclosed information about informants in the
 13 Aberdeen area, the CI List and discovery related to it are plainly material to potential
 14 defenses at trial. The fact that someone other than Mr. Stocker is continuing to circulate
 15 information about informants may well lead a jury to conclude that some or all of the
 16 “leaks” attributed to Mr. Stocker may have another source. That conclusion alone could
 17 establish reasonable doubt as to the charge against him. See generally *United States v.*
 18 *Crosby*, 75 F.3d 1343, 1347 (9th Cir.1996) (“Fundamental standards of relevancy. . .
 19 require the admission of testimony which tends to prove that a person other than the
 20 defendant committed the crime that is charged”) (alteration and omission in original)
 21 (citation and quotation marks omitted); *United States v. Armstrong*, 621 F.2d 951, 953
 22 (9th Cir. 1980) (same).

23 Defendants have a right pursuant to Fed. R. Crim. P. 16 to all discovery that is
 24 “material to preparing the defense.” *United States v. Soto-Zuniga*, 837 F.3d 992, 1000
 25 (9th Cir. 2016) (citing Rule 16(a)(1)E)). “Materiality is a low threshold; it is satisfied so
 26 long as ‘the information [] would have helped’ [the defendant] prepare a defense.”
United States v. Hernandez-Meza, 720 F.3d 760, 768 (9th Cir. 2013) (quoting *United*

1 *States v. Doe*, 705 F.3d 1134, 1151 (9th Cir.2013)). The information need not be
2 admissible or even exculpatory. Instead, “[i]nformation is material even if it simply
3 causes a defendant to ‘completely abandon’ a planned defense and ‘take an entirely
4 different path.’” *Hernandez-Meza* at 768 (quoting *Doe* at 1151). Evidence that will
5 “‘play an important role in uncovering admissible evidence, aiding witness preparation,
6 corroborating testimony, or assisting impeachment or rebuttal’” must also be provided
7 by the Government. *United States v. Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993))
8 (citations omitted).

9 The Government is obligated to disclose the records and information that have
10 been requested. The defense has the right to conduct an independent investigation into
11 the source of the CI List, and the Government does not deny that it has material relevant
12 to that investigation. Further, based on the limited inquiries about the list that the
13 defense has been able to make so far, there is reason to believe that the Government
14 now has information inconsistent with its claim that “the evidence gathered to date
15 points directly to defendant Stocker as having released the document.” Dkt. 41 at 3.

16 There can be no reasonable dispute that the information sought is both material
17 and discoverable. Nevertheless, the defense recognizes that the Court may want to
18 balance the defense’s right to the discovery against the Government’s claim that it
19 needs additional time to complete its investigation. Accordingly, the defense is not
20 opposed to an order that sets a reasonable deadline prior to trial for the Government to
21 finish its investigation and provide the discovery. However, this deadline should be a
22 short one. After all, the Government had no hesitation about disclosing its investigation
23 and accusing Mr. Stocker of obstructing justice almost a month ago. The Court should
24 not allow the Government to make unsubstantiated allegations against a defendant
25 when it suits its purposes, and then permit the Government to withhold discovery about
26 those allegations when it may serve a different purpose, namely an exculpatory one.

1 Accordingly, the defense proposes that the Court set a deadline of November 1,
2 2017, for the Government to disclose the reports and other evidence identified in Mr.
3 Stocker's September 14, 2107 discovery demand. That will allow the defense a
4 reasonable amount of time to review the discovery and conduct its own investigation
5 before trial on January 16, 2017.

6 **III. CONCLUSION**

7 For the reasons set forth above, the Court should order the Government to
8 disclose to the defense all reports and other materials related to the "CI List," including
9 the names of the witnesses referenced in its Additional Briefing, no later than
10 November 1, 2017.

11 DATED this 6th day of October, 2017.

12 Respectfully submitted,

13 *s/ Colin Fieman*

14 *s/ John Carpenter*

15 Attorneys for Charles Andrew Stocker
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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2017 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of filing to all registered parties.

s/Carolynn Cohn
Paralegal